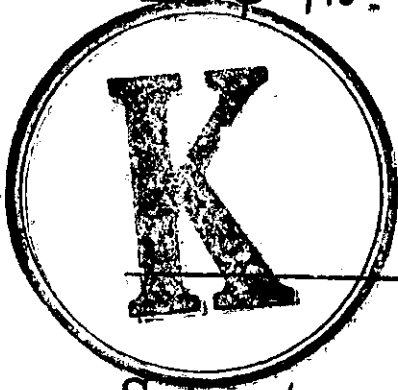


1954.



Subject:—

File No. O: Village

Legal DEPARTMENT Pandharyats/4

A BRANCH

Opinions under the Bombay
Village Panchayats Act, 1933

P 30 E

File No.

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O Village Panchayats /41

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~~CONFIDENTIAL~~

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Sr. No.	Compilation No.	Subjects	pages.
15)	O.No.8531/29-9-41.	Question whether a local area which is declared to be a village under Sec. 4 of the Bombay Village Panchayats Act, 1933, but where no Panchayat has been constituted under section 6, can continue to remain under the authority of the D.L.B. and if so, whether the D.L.B. would be responsible for construction and maintenance of roads, sanitation etc.	37 -38
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DYR.

As the Bombay Village Panchayats Act, 1933 contains no provision^{si} prescribing any specific period of notice for calling the first meeting of the Panchayat under section 12(1) a reasonable notice would be sufficient. A notice of seven days would ordinarily be regarded as reasonable. The view expressed by the Commissioner in paragraph 2 at page 2 ante and concurred in by the General Department in paragraph 2 at p.3 ante is correct.

Id/-

Remembrancer of Legal Affairs.

U.R.to the G.D.,No.1099 dated the 4th February 1941.

The question referred to the R.L.A. is whether under section 4(2)(b) of the Bombay Village Panchayats Act, 1933, read with section 52 of the Government of India Act, 1935, it would be competent for Government to dispense with the consultation with the District Local Board.

2. Section 52 of the Government of India Act, 1935 does not in any way affect or modify the provisions of a validly enacted provincial law and in this particular case it does not seem to be attracted at all. Patdi is one of the seventeen inam villages in the Ahmedabad District and although the Chief of patdi has eight jurisdictional villages in the Kathiawar Agency, his position in respect of the villages in the Ahmedabad district is that of an Inamdar. The main object of the Bombay Village Panchayats Act, 1933 as stated in its preamble is to foster the growth of the village panchayats and to increase their utility in the further development of local self-Government in rural areas and the administration of civil and criminal justice. The establishment of a village panchayat at patdi will not affect the rights and dignity of the chief as Inamdar of that village and the fact that he is the ruler of certain villages outside British India would not make any difference. It appears therefore that section 52(1)(f) of the Government of India Act has no application to the present case.

3. In view of the clear wording of section 4(2)(b) of the Bombay Village Panchayats Act, 1933 it would not be legally feasible to take any action under that provision without consultation with the District Local Board. It may however be pointed out that the expression used in this connection is "after consultation with" and not "with the consent of" or even "in consultation

with " and consequently it is open to Government to disregard the opinion of the District Local Board in arriving at its own decision and taking action accordingly; but the consultation itself cannot be altogether dispensed with.

Id/- ----

Remembrance of Legal Affairs.

U.R. to G.D.No.1054, dated the 4th February 1941.

The question for the consideration of the R.L.A. is whether the District Local Board, Kaira can be called upon under sections 6(3) of the Bombay Village Panchayats Act, 1933 to fill up all the vacancies of a village panchayat when at the date of election not a single ^a candidate offered himself for election. The answer would appear to be in the affirmative.

2. Section 6(3) of the Village Panchayats Act provides that if for any reason the election does not result in the return of the required number of qualified persons willing to take office, the District Local Board shall, within four weeks from the date on which the names of elected members are published in the Official Gazette under section 7, appoint the required number of persons, being persons who have been qualified to be elected. If the District Local Board fails to make all or any of such appointments within the time specified, the Collector shall make such appointments; and the persons so appointed shall be deemed to have been duly elected under sub-section (1).

3. The Village Panchayats Act contains no specific provision dealing with the contingency of there being no nominations at all in respect of the proposed election and ordinarily it would be desirable to give another opportunity to the electors by holding a ^rfresh election. (Rogers on Elections, Vol.III page 83, 12th edition 1933).

4. The language of section 6(3) of the Village Panchayats Act is. but for a purely verbal amendment accepted on the floor of the House, almost identical with the language of section 18(3) of the Bombay Local Boards Act, 1923. Comparing the language of sub-sections (1) and (5) of section 5 read with section 18(3) of the Bombay Local Boards Act with the language of section 6 of the Village Panchayats Act, it would appear that in this context the expression "election" ought

(7)

not to be restricted to its narrow meaning of actual choice of a person to fill any office or to membership in a society by vote i.e. upon taking a poll. Election in section 6(3) must be construed widely so as to include even the mere observance of the procedure prescribed for the election whether or not it results in the return of one or more members. Section 6(3) does not require that there must be a poll or that at least one vote ~~must~~^d be recorded at an election, much less that there should be the return of at least one person before vacancies can be filled up by the District Local Board or by the Collector as the case may be. For the purpose of this section it is enough if ~~for any reason~~ the election does not result in return of the required number of qualified persons. So even when all the seats have remained vacant on account of the unwillingness of candidates to stand for election, it will be for the District Local Board to appoint the required number of persons as provided in section 6(3). Since no names of elected members could be published in respect of an election at which no nominations were received, the duty of making appointments under section 6(3) will have to be exercised as expeditiously as possible, i.e. within a reasonable time, either by the District Local Board or upon default, by the Collector.

Id/- - 17/2.

Remembrancer of Legal Affairs.

U.R. to G.D.No. 1497, dated the 18 th February 1941.

It appears that in the village Panchayat of Vanghroli, Taluka Thasra there are 11 elected seats out of which one seat each is reserved for women, Muslims, and Harijans. The general election held on 5-11-40 resulted in the return of 8 qualified persons and their names have been published in the B.G.G. dated 21-11-40. But before their names were actually published all the eight members gave an application on 18-11-40 to the Mamlatdar, Thasra, stating that they were not willing to be members of the Panchayat and that, therefore, their resignations might be accepted. The question for consideration of the H.L.A. is whether the District Local Board can be asked to fill up these seats under sec.6(3) of the Bombay Village Panchayats Act, 1933.

2. It is no doubt true that the resignations of these members who have been returned at the general election would not fall under sec.13 of the Bombay Village Panchayats Act, 1933 being prior to their taking office. But such resignations seem to fall under sec.6(3). The words "willing to take office" in that provision clearly indicate that the returned members must be not only qualified but also willing to take office. In the present case the members who were returned at the general election have expressed by their resignations their unwillingness to take office. Consequently it would amount to

the general election not resulting in the return of any qualified member willing to take office within the meaning of sec.6(3). It would be legally feasible to ask the District Local Board to appoint the required number of persons under sec. 6(3). I agree "seen and returned" the course proposed to be followed in the G.D.note at 6 p. ante is legally in order

Id/- --- 27.2. 41.

17/2.

R.L.A. 20/2.

U.R. to G.D.No.1718 dated 25-2-1941.

The present constitution of the Chapnal Village Panchayat consists of 10 unreserved seats and one reserved seat for women. It is now proposed to change the constitution by having two reserved and 9 unreserved seats. The question is whether the constitution can now be revised and by-election can be held in accordance with the revised constitution.

2. Section 11 of the Bombay Village Panchayat Act, 1933, states that the members of a village panchayat shall, save as otherwise provided, hold office for a term of three years. Section 23 of the Act provides that casual vacancies arising on account of disablement, death, resignation, disqualification, absence without leave or removal of a member shall be filled up by a member who shall hold office so long only as the member in whose place he has been elected would have held the office if the vacancy had not occurred. These provisions read together cannot mean that once a village panchayat has come into existence it would ordinarily continue in office till a new panchayat is constituted irrespective of any revision of the constitution of the panchayat during the interval (Vide R.L.A's opinion No.1664, dated the 14th July 1926). If the constitution was legal on the date of the election, it will not be open to Government to render it illegal by giving retrospective effect to the revised constitution (vide R.L.A's No.1817, dated the 5th August 1926). Consequently even though under section 6(1) read with section 108(1)(b) of the Bombay Village Panchayat Act, 1933, Government may now revise the constitution of the Chapnal Village Panchayat and reserve one seat for the Harijans, in view of the opinions referred to, the revised constitution cannot come into operation until the term of the present panchayat expires. The casual vacancy will, therefore, have to be filled in accordance with the present constitution and a member will have to be elected for the unreserved seat (Vide R.L.A's No.250, dated the 18th January 1928). The proposal

(13)

made by the Collector of Satara in paragraph 2 at 2 ante
is, therefore, not legally in order.

Id/- - - 25/11.

Remembrancer of Legal Affairs.

U.R.to C.D. No. 3713, dated 26 th April 1941.

It is no doubt true that the latter part of section 6(3) of the Bombay Village Panchayats Act, 1933 provides that the persons so appointed i.e. persons appointed by the district local board or by the Collector shall be deemed to have been duly elected under sub-section(1); but if sub-section (3) is read as a whole, it will be clear that the persons appointed must be persons who would have been qualified to be elected and also would be willing to take office (cf R.L.A's opinion No.1718, dated the 25th February 1941). Consequently the appointment made by the District Local Board, Broach to the village panchayat at Achhod of persons who are unwilling to take office is not valid or completely effectual in law and fresh appointments can be made under section 6(3).

2. The next question for consideration is whether fresh appointments should be made by the District Local Board, Broach, or by the Collector.

3. Section 6(3) states that if the district local board fails to make all or any such appointments within the time specified, the Collector should make such appointments. In the present case the District Local Board, Broach did not altogether fail to make such appointments; but the appointments made by it have become infructuous by reason of the members so appointed being unwilling to take office. Consequently the District Local Board, Broach, cannot be said to have failed to make such appointments. The power to make such appointments is a statutory power under section 6(3) which can be exercised by the district local board from time to time as occasion arises (see section 14 of the Bombay General Clauses Act, 1904) and such power is not exhausted by a single exercise (see ^tCrates p.245) much less by an infructuous attempt to exercise. Consequently it would be incompetent for the District Local Board, Broach, to make fresh appointments.

4 The last question for consideration is whether the

District Local Board, Broach, should make fresh appointments within any time. It is true that under section 6(3) the district local board is required to appoint within four weeks from the date on which the name of elected members are published in the Official Gazette under section 7, the required number of persons. In the present case no members were elected at the general election. Consequently the time limit will not apply and it would be competent for the District Local Board, Broach, to make fresh appointments as early as possible i.e. within a reasonable period (See. R.L.A's No.1497, dated the 18th February 1941).

IdX - - - - 29/4.

Remembrancer of Legal Affairs.

U.R. to G.D. No. ³⁸⁵⁹3859 dated the 30th April 1941.

Mr. Ramanlal, Revenue and Police Patel of Sinhuji, being a Government servant was not entitled to be a member of the village panchayat (see R.L.A.'s opinion No.8796, dated 7th October 1940). Although Mr. Ramanlal was on leave when he was elected to the Panchayat, he did not cease^s to be a Government servant. His election being in contravention of section 8(j) of the Bombay Village Panchayats Act, 1933, it would be competent for the Collector to take action under section 9(1) of the Act. The view taken in G.D. office note at p.7 ante is correct.

Id/- - 9/5.

Remembrancer of Legal Affairs.

U.R. to the G.D.No.4296 dated the 10th May 1941.

.DYR.

The question ^Lraised for consideration is whether a Village Panchayat is bound under section 89(1) of the Village Panchayat Act, 1933, to levy house tax on houses and cottages built by agriculturists in their fields. Section 89(1) of the said Act provides that every panchayat shall levy a tax upon the owners and occupiers of houses and lands which are not subject to payment of agricultural assessment within the limits of a village. The limits of a village as declared under section 4 of the Act may include (1) lands, originally held for agricultural purposes, but since converted to non-agricultural use or building use ^{to} and subjected non-agricultural use or building use and subjected to non-agricultural assessment under the Bombay Land Revenue Code, and (2) lands with farmhouse, but subject to agricultural assessment. Upon a plain reading of section 89(1), it is clear that the Panchayat can and must impose the house tax upon all houses and lands except such houses and lands as are subject to agricultural assessment.

Id/- 20/5.

Remembrancer of Legal Affairs.

U.R. to G.D.No.4664, dated the 22nd May 1941.

DYR.

The question for the R.L.A's consideration is whether the persons nominated by the Collector under section 6(3) of the Bombay Village Panchayats Act, 1933, should be persons qualified to be elected. The answer to the question is in the affirmative.

2 Section 6(3) of the Bombay Village Panchayats Act, 1933, provides that "if for any reason the election does not result in the return of the required number of qualified persons willing to take office, the District Local Board shall, within four weeks from the date on which the names of elected members are published in the Official Gazette under section 7, appoint the required number of persons, being persons who would have been qualified to be elected. If the District Local Board fails to make all or any of such appointments within the time specified, the Collector shall make such appointments; and the persons so appointed shall be deemed to have been duly elected under sub-section (1)". When all the seats have remained vacant on account of the unwillingness of candidates to stand for election, it will be for the District Local Board etc. to appoint the required number of persons ^{as} provided in section 6(3) (vide R.L.A's opinion No. 1497, dated the 18th February 1941.) . If section 6(3) is read as a whole, it will be clear that the words "such appointments" indicate that the persons appointed either by the District Local Board or the Collector, as the case may be, must be persons who would have been qualified to be elected and also would be willing to take office (para. 1 of R.L.A's opinion No. 3859, dated the 30th April 1941).

Id/23/5

Membrancer of Legal Affairs.

Section 4(1) of the Land Acquisition Act provides that whenever it appears to the Provincial Government¹ that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette. Section 6(1) states that when the provincial Government is satisfied that any particular land is needed for a public purpose a declaration shall be made to that effect under the signature of a Secretary to such Government or some officer duly authorised to certify its orders. Sub-section(3) of section 6 lays down that such¹ declaration shall be conclusive evidence that the land is needed for a public purpose. In this case, the land is required for the construction of a road by a village panchayat. The land is therefore clearly needed for a public purpose and if Government¹ is satisfied on this point, it can start proceedings under the Land Acquisition Act for the acquisition of this land. Under section 29 of the Village Panchayats Act a village panchayat is competent to acquire and hold property, both moveable and immoveable. Under section 26(1)(c) it is the duty of the panchayat to make reasonable provision for the construction, maintenance and repair of public roads. Under section 32 all property vested in the panchayat and all funds received by it and all sums accruing to it shall be applied subject to the provisions and for purposes of the Village Panchayats Act. Reading these provisions together, it is clear that a village panchayat can acquire land needed for purposes of a road. Such land may be acquired by the village panchayat either directly by negotiation with the parties concerned or through Government. There is nothing in the Village Panchayats Act or in the Land Acquisition Act which debars Government from acquiring land which is needed for a public purpose under the Land Acquisition Act and then transferring it to a village panchayat. It is true that the Village Panchayats Act does not contain

provisions similar to those contained in section 41 of the Bombay District Municipal Act, section 52 of the Bombay Municipal Boroughs Act or section 137 of the Bombay Local Boards Act. The absence of such a provision in the Village Panchayats Act is however not a sufficient ground for holding that the land required in this case cannot be acquired under the Land Acquisition Act. The only restriction placed by this Act on the power of Government^{nt} to acquire land is that Government must be satisfied that the land is required for a public purpose. So long as this condition is satisfied and so long as the procedure laid down in the Land Acquisition Act is followed, the acquisition proceedings will not be illegal. It would therefore be open to Government to acquire and needed for purposes of a public road by the Village Panchayat, Hansot and after so acquiring it transfer it to the Village Panchayat on payment by the latter body of all costs incurred by Government on account of the acquisition.

Id/ ----- 27/5.

Remembrancer of Legal Affairs.

U.R.to G.D. No.4868 dated the 27th May, 1941.

The question raised for consideration is whether a Sarpanch of Village Panchayat who is guilty of misconduct and is not removed by the District Local Board under section 21 of the Village Panchayats Act can be removed from office by Government.

2. Section 21 of the Bombay Village Panchayats Act, 1933, empowers the District Local Board with the previous sanction of the Collector, to remove from office a Sarpanch, a Deputy Sarpanch or a member of a Village Panchayat in certain cases. The Act does not expressly give such power to the Collector or to the Provincial Government^{nt}. Section 107(1) of the Act provides that in all matters connected with this Act the Provincial Government shall have and exercise the same authority and control over the District Local Boards as it has exercised over them under the Bombay Local Boards Act, 1923. These provisions as to control are contained in Chapter X of the latter Act. The General Department note refers to section 127(1) in Chapter X of the Bombay Local Boards Act, 1923, which is the relevant provision as to the powers of Government. That section empowers Government to take action only where the Board has made default in the performance of any duty imposed by or under the Act or any other Act. The provision refers to an obligatory duty of the Board. Section 21 of the Village Panchayats Act, 1933, does not impose upon the Board the obligatory duty to remove from office a Sarpanch or other member of a Village Panchayat in certain circumstances, but only empowers it to do so. Consequently section 127(1) does not empower Government to remove a Sarpanch from office where the Local Board fails to do so.

Id/----- 4/6

Remembrancer of Legal Affairs.

Sub-section 1 of section 4 of the Bombay Village Panchayats Act, 1933, provides that whenever the Provincial Government, after making such inquiry as may be prescribed is satisfied that any local area comprising a village or a group of villages has a population of not less than 2,000 it shall, by notification in the Official Gazette, declare such local area to be a village. The proviso to this sub-section gives¹ discretion to Government to direct that any local area having a population of less than 2,000 be declared a village. Sub-section 2 empowers the Provincial Government, after consultation with the District Local Board, to declare that any a local area shall cease to be a village. All these provisions must be read together, and construed harmoniously. Sub-section 2 cannot therefore be held to override the mandatory provisions of sub-section 1; the powers of Government under sub-section 2 can only be interpreted as intended to be exercised in certain circumscribed limits, for instance, where the population of local area declared a "village" under sub-section 1 drops below 2,000, or where the whole local area is incorporated into another "village", or where the local area concerned was declared a "village" under the Proviso to sub-section 1. When action is taken, in such cases, under sub-section 2 no question arises of Government having to renotify the local area as a village under sub-section 1.

Id/-----11/6.

Remembrancer of Legal Affairs.

U.R. to G.D., No.5353, dated the 16th June 1941.

(view confirmed by Adv. General- vide opinion of 17-7-1942)

D.S.	(	Before issue)
A.L.R.	(	" "
S.A.S.	(	" "
A.S.	(	" "

As section 4(2)(a) of the Bombay Village Panchayats Act, 1933, gives discretion to Government to exclude any local area from the village declared as such under section 4(1), it is competent to Government to exclude by notification the local area covered by the Chief's residence from the village of Patdi after consulting the District Local Board, Ahmedabad.

Id/---- 17/7.

Remembrancer of Legal Affairs.

Id/-- 17.7.41.

U.R. TO G.D., No. 6351, dated the 21st July 1941.

D.S.	(Before Issue)
A.L.R.	(" ")
S.A.S.	.(" ")
A.S.	(" ").

(33)

Submitted.

vide p.1 ante

Vide 38 of B.G.G. 1940
H.I.-A.

L.P.3-4 ante.

p. ante

p.2 ante

pp.5-6 ante

The village of Kajgaon has been declared to be a 'village' under section 4(1) of the Bombay Village Panchayats Act, 1933 (vide G.D. Notification No.512/33(b) dated 19-3-40). The Mahalkari reports that the villagers are not in favour of a village panchayat and consequently no one has offered himself as a candidate for the election. The President, D.L.B., East Khandesh, was therefore asked to make the appointment of the required number of members under section 6(3) of the Bombay Village Panchayat Act, 1933. In view, however, of the report of the Chief Officer, the President considers that no useful purpose would be served by enforcing a village panchayat at Kajgaon. The Collr. agrees with this view and requests that Government may be moved to declare the village of Kajgaon to cease to be a "Village" under section 4(2)(b) of the Act. The Commr. C.D., however, states that instead of abolishing the village panchayat once established, it should be run under section 102(4) of the Village Panchayats Act, 1933. With regard to this proposal of the Commr., C.D., the G.D. office states that it is not possible to supersede the village panchayat as it has not still been constituted.

2 The question for the R.L.A's consideration is whether action under section 102(4) of the Bombay Village Panchayats Act, 1933, can be taken in respect of a village panchayat which has not been consti-

-tued under section 6 of the Act.

3. Section 102(1) of the Bombay Village Panchayats Act, 1933, provides that if in the opinion of the Provl. Govt. a panchayat exceeds or abuses its powers, or makes persistent default in the performance of the duties imposed on it under section 26, or any other law for the time being in force or persistently disobeys any orders of the Collr. or Commissioner under Section 99 the Provl. Govt., after consultation with the D.L.B., by order in the Official Gazette, -

(1) dissolve such panchayat, or

(a1) supersede such panchayat for the period specified in the order.

Thus sub-section(1) clearly contemplates that a panchayat whether dissolved or superseded should be one capable of performing the duties imposed upon it under this Act or any other Act and therefore existing at the date of the order of the dissolution or supersession. Sub-section (4) of section 102 speaks of the consequences resulting from the order of supersession. "Supersession is nothing more than the dismissal of incompetent councillors followed by the appointment of, to borrow the language of the English law, a custos for the discharge of the functions of the council pending the nomination or election of other persons who would resume work in the normal way. Supersession is but a suspension of the council. The Municipal councillors holding office at the time of supersession cease to do so

(36)

altogether etc. " (p.18 of Aiyangar's Municipal Law). Consequently, it is clear that unless there is a village panchayat constituted under the Act, no question of supersession will arise. As in the present case, a village panchayat is not constituted under section 6, section 102 will not be operative. The view of the G.D. Office at ^tthe view expressed at A in G.D. Office note at p5 ante is correct. (Papers may be seen & returned)

Id/-----19/7.

Remembrancer of Legal Affairs.

U.R. to G.D. No.6702 dated 30-7-41.

The question for consideration of the R.L.A. is whether a local area which is declared to be a village under section 4 of the Bombay Village Panchayats Act, 1933, but where no Panchayat has been constituted under section 6, can continue to remain under the authority of the District Local Board, and if so, whether the District Local Board would be responsible for construction and maintenance of roads, sanitation etc.

2. Sub-section (1) of section 4 of the Bombay District Local Boards Act, 1923, provides for the establishment of a district local board for each district. Sub-section (3) enacts that a district local board shall have authority for the purposes of this Act over the area for which it has been established, except such portion thereof as is for the time being within the limits of a municipal district or cantonment. It is clear from these provisions that although a local area is declared to be a village under section 4 of the Bombay Village Panchayats Act, 1933, such area would not cease to be a part of the area for which a district local board is established. Consequently the district local board will have to make adequate provision for such area in regard to matters such as construction and maintenance of roads and sanitation under section 50 of the District Local Boards Act, 1923, until a Panchayat is duly constituted for such area under section 6 of the Bombay Village Panchayats Act, 1933. The view expressed in para. 4 of G.D. office note at page 37 ante is correct.

Id/----- 2389-

Remembrancer of Legal Affairs.

U.R. to G.D. No. 8531 dated the 29th September 1941.

D.S. (Before Issue)
A.L.R. (After ")
S.A.S. (Before ").

It appears that the President, District Local Board, Bijapur, fixed under section 12(1) of the Bombay Village Panchayats Act, 1933, the 25th March 1941 as the date for holding the first meeting of the Village Panchayat, Muddebihal, but the retiring Sarpanch called the meeting on 28th March 1941 and at that meeting ¹one Mr. R.K.Magi was elected Sarpanch of the Village Panchayat. Since, however, the retiring Sarpanch failed to call the meeting on 25th March 1941 i.e. a date fixed under section 12(1) and the President, District Local Board, Bijapur, also failed to call a meeting within the time prescribed under the proviso to section 17(2) read with section 17(1) in default of the retiring Sarpanch, the President, District Local Board, requested the Collector of Bijapur to convene a meeting for the purpose under the proviso to section 17(2), but instead of himself calling the meeting as required by the proviso to section 17(2) the Collector directed on 14th May 1941 the Mamlatdar, Muddebihal, to call the meeting and report the result. Finding that he should have fixed the date of the meeting himself the Collector informed the Mamlatdar on 7th June 1941 in supersession of his previous orders that the date for the election of Sarpanch was fixed for the 19th June and that the election if already held should be treated as invalid. Again the Collector discovered that he had made the mistake in the second order of asking the Mamlatdar^r to preside or to appoint some one to preside over the meeting instead of himself nominating a member of Panchayat to preside under section 17(2). He, therefore, on 21st June 1941, informed the Mamlatdar that his order dated 7th June 1941 was invalid and the meeting should be called on 7th July 1941.

2. Unfortunately however before the Collector's order dated 7th June 1941 was issued the Mamlatdar had called a meeting on 2nd June 1941 in pursuance of the first order of the Collector dated 14th May 1941 and Mr. R.K.Magi was elected Sarpanch. At the meeting called on 19th June 1941 in accordance with the second order of the Collector dated 7th June 1941

Mr. Magi was again elected Sarpanch. At the meeting held on 7th July 1941 in accordance with the third order of the Collector dated 21st June 1941 one Mr. Motgi was elected Sarpanch and has since taken over charge of his office. The question for consideration of the Remembrances of Legal Affairs is which of the two i.e. Messrs. Magi and Motgi is validly elected and what action, if any, should be taken by Government.

3. A corporation can only do corporate acts at a corporate meeting, unless a special method is authorized by constitution. To be duly constituted a corporate meeting must be convened by the proper authority and must be held upon notice which gives every member of corporation entitled to attend an opportunity of attending unless it is held on the charter day (Halsbury's Laws of England Vol.VIII para. 89, pp. 51, 52) In cases where a municipal corporation possesses the privilege of electing its President or Chairman the President or Chairman is elected by the Councillors. The provision prescribed by statute for this election should be complied with (Aiyanger's Law of Municipal Corporation in British India p.92). A meeting presided over by a Chairman ^Fneither elected nor appointed according to the provisions of the Statute is not a valid meeting (ibid p.148).

4. In the present case the first meeting called on 28th March 1941 at which Mr. R.K.Magi was elected was not validly convened since it was not convened on 25th March 1941, a date fixed by the President, District Local Board, Bijapur, under section 12(1) of the Bombay village Panchayats Act, 1933; nor were the next two meetings called on 2nd June 1941 and 19th June 1941 respectively at which Mr. Magi was again elected were properly convened, since the Collector failed himself to convene such meeting on the first occasion and to nominate one of the members to preside at the meeting on the second occasion in compliance

with the provisions of the proviso to section 17(2). It is, therefore, clear that none of these three meetings at which Mr. Magi was elected was duly and validly convened and consequently the election of Mr. Magi is not valid.

5. It is true that the Bombay Village Panchayats Act does not provide for an appeal to the Collector against the decision of a Panchayat in regard to the election of its Sarpanch. If the decision of a panchayat in regard to the election of the Sarpanch offends against the provisions of section 99 of the Act it would be competent to the Collector to interfere and if it does not, the parties should be referred to the civil court (see R.L.A's opinion No.7170, dated 21st September 1938) If Mr. Magi by virtue of his election as Sarpanch however invalid, was holding charge of his office as Sarpanch it would not have been competent for the Collector to dislodge him from office and to install Mr. Motgi in office and in that case the only legally feasible, course as suggested by the Commissioner in his letter at page 1 ante would have been to treat the election of Magi as valid and to ask Mr. Motgi to go to the Civil Court if he had any grievance. But the position has now changed by Mr. Motgi having taken over charges of office of Sarpanch. A person defacto in possession of an office is presumed to be rightly in possession until the contrary is established by due course of law (see Halsbury's Laws Of England Vol. - VIII, p.34). The proper course would therefore be to allow Mr. Motgi to function as Sarpanch and to refer Mr. Magi to a civil court for redress of his grievance, if any.

D.S. (Before Issue)
A.L.R. (" ")

Id/----- 10/11.

Remembrancer of Legal Affairs.

U.R. to G.D., No.9697, dated the 11th November 1941.

DYR.